

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 92-023-R AND 94-045-R - ORDER NO. 2000-818

OCTOBER 9, 2000

IN RE:	Application of South Carolina Electric & Gas)	ORDER
	Company for Adjustments in the Company's)	GRANTING
	Coach Fares and Charges, Rates, and Route)	STAY
	Schedules.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Motion of the Consumer Advocate for the State of South Carolina (the Consumer Advocate) for a stay of Commission Order No. 2000-787, dated September 27, 2000.

This matter involves changes to South Carolina Electric & Gas Company's (SCE&G's) transit rates and schedules which were approved by the Commission in 1992. The procedural background leading up to the issuance of Order No. 2000-787 has been described as long and tortured, however, the essence of that background is that Circuit Court Judges Rushing and Lee basically reversed prior Orders of this Commission which were related to a transit fare increase, establishment of a Low Income Discount Rider Fare Plan, route changes, expansion of the service area of SCE&G's paratransit system, called Dial-A-Ride Transportation (DART) service, and other related matters. SCE&G appealed those Orders, alleging generally that SCE&G's transit rates should be set based upon consideration of the transit operations standing alone, without reference to the Company's electric and gas profits.

Judge Rushing's Order held that the Commission had no authority to include any properties of SCE&G, which were not used and useful in rendering the service for which the rate was set. This Commission, on remand, did not comply with Judge Rushing's Order, based on an exception to the "law of the case" doctrine. After an appeal by SCE&G, Judge Lee reversed the Commission again, and remanded the matter back to this Commission with instructions to comply with Judge Rushing's Order. In Judge Lee's Order, she recognized the hardship which may result from implementation of the Circuit Court Orders. Judge Lee stated, "The appropriate procedure is for the Commission to follow the Rushing Order, issue a decision, and invoke its powers to stay the implementation of any decision pending appellate review. If the Commission is unable to issue a stay pending appeal, then, upon petition, the parties may make such a request as provided by the appropriate rules of procedure or statutes." This Commission then issued Order No. 2000-787 in compliance with the Judge Rushing's Order, and in accord with Judge Lee's Order.

The Consumer Advocate now moves for a stay of that Order, pending appeal. S.C. Code Ann. Section 1-23-380 (A)(2) (Supp.1999) states, in part, that an agency may grant, or the reviewing court may order a stay of an agency decision upon appropriate terms. The Consumer Advocate states that, absent a stay of the Commission's Order, SCE&G bus riders may suffer irreparable harm, in that riders under the Low Income Discount plan may have to pay a seventy-five cent fare instead of the forty cent fare provided for under the plan. The Consumer Advocate further states that it is

administratively impossible to make riders whole after the fact of paying the fare and riding the bus.

SCE&G replied to the Motion, stating that the financial losses by the Company, due to the transit system are undeniable, and that to further delay implementation of the relief sought by the Company in 1992 and granted by Judge Rushing in 1995 amounts to substantial and irreparable harm to the Company. Like the Consumer Advocate, SCE&G states that any effect on the bus ridership would result from the impact of requiring transit passengers to pay 75 cents with the elimination of the Low Income Discount Program, and travel plan adjustments from possible route changes. The Company states that it would notify the public prior to the implementation of any such fare and route changes. The Company infers that this result is less "irreparable harm" than that which will be suffered by the Company from further delays in implementation of the relief sought by it. SCE&G requests that it be allowed to implement the route and rate changes requested in 1992, approved by Judge Rushing on May 12, 1995, affirmed by Judge Lee on May 25, 2000, and authorized by this Commission in Order No. 2000-787.

In considering the relief sought by the Consumer Advocate, we must balance the potential for "irreparable harm" that may occur with the bus ridership against the potential for "irreparable harm" that may be suffered by the Company. While we understand SCE&G's position in this matter, we must resolve this issue in favor of the bus ridership. The record in the past has shown that a large percentage of SCE&G's bus riders ride pursuant to the Low Income Discount Plan, perhaps as many as 50% of the ridership. We think that suddenly subjecting this ridership to an increase from 40 cents to

75 cents per ride will cause irreparable harm to the ridership, in that many riders may not have the financial wherewithal to withstand the increase. Such an increase could result in many riders being unable to afford a bus ride to places of employment, which could result in the loss of jobs. Second, the bus ridership would have no adequate remedy at law to be made whole after paying an increased fare and riding the bus, since such riders could not be identified for future reparations. We believe that the Consumer Advocate's request for a stay of our Order No. 2000-787 should be granted. See Judge Lee's Order.

In addition, we further believe that the Circuit Court's interpretation of the Supreme Court's decisions in the Broad River and Coney cases is highly controversial, and subject to great debate. As we stated in Order No. 2000-787, we do not necessarily agree with the reasoning espoused by Judges Lee and Rushing, however, we felt that we had no choice but to issue Order No. 2000-787 in compliance with the directives contained in the Orders issued by those Judges. Because the South Carolina Supreme Court has not had the opportunity to review these issues, however, we further believe that our Order based on the holdings of these Circuit Court Orders should be stayed until the South Carolina Supreme Court reviews the case, and issues its decision thereon, or until a Court issues an Order vacating the stay.

We hold that no bond need be posted by the Consumer Advocate as the result of our issuance of this stay, since the stay was issued at the request of an agency of the State of South Carolina. (See, for example, Rule 62 (e), SCRCF.)

Accordingly, the stay is granted.

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This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:



Executive Director

(SEAL)